

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2015-0520

**CHRISTOPHER CORDES, EDDIE AXNER CONSTRUCTION, INC., AND EDDIE AXNER
ASSESSOR PARCEL 041-300-035-000
SHASTA COUNTY**

**PROSECUTION TEAM'S REBUTTAL BRIEF IN RESPONSE TO EDDIE AXNER
CONSTRUCTION, INC. AND EDDIE AXNER'S LEGAL AND TECHNICAL ANALYSIS AND
COMMENTS; AND CRIS CORDES' OPPOSITION TO COMPLAINT**

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I. Introduction

Eddie Axner Construction Inc., Eddie Axner, and Christopher Cordes ("Dischargers") submitted comments and opposition in response to Administrative Civil Liability Complaint No. R5-2015-0520 (ACL Complaint) asserting, for different reasons, that civil liability should be eliminated altogether, or reduced significantly. The Dischargers do not dispute the basic facts concerning property ownership, who conducted the work, the lack of necessary permits, or that the property was developed and used to grow marijuana.

Mr. Eddie Axner and Eddie Axner Construction Inc., (referred to collectively hereafter as Axner) submitted a Technical Analysis and Comments (referred to hereafter as Axner's Response or Response) which asserts a number of policy arguments, as well as, legal and factual arguments for why liability should be eliminated or reduced. For the reasons detailed below, Axner's arguments lack merit.

Mr. Cordes submitted an Opposition to Complaint (referred to hereafter as Cordes' Opposition or Opposition) and supporting documents that assert an inability to pay defense and argue that imposing a liability will preclude his participation in remediation of the Site. The documents provided by Mr. Cordes to support his inability to pay claim are incomplete, ambiguous and suggest an additional source of income and/or assets not documented or discussed.

While the Central Valley Regional Water Quality Control Board (Central Valley Water Board) is required to consider inability to pay and continue in business, it is not legally required to dismiss or even reduce the liability when the dischargers do not provide substantial evidence to demonstrate an inability to pay. Here the evidence provided by Mr. Cordes is incomplete and the Central Valley Water Board cannot make a finding of inability to pay due to the incomplete nature of the evidence. Furthermore, Mr. Cordes does not deny being involved in the cultivation of marijuana on the Site and the cash basis of cultivation operations are not accounted for under a traditional ability to pay analysis.

II. Axner's Policy Statements are Vague and Irrelevant to the Violations Alleged

Axner points to the "Strategy – Regulation and Enforcement of Unauthorized Diversions; Discharge of Waste to Surface and Groundwater Caused by Marijuana Cultivation" (Strategic Plan) as supporting the vague proposition that the State and Regional Water Quality Control Board's cannabis enforcement efforts toward contractors and the construction industry should be focused on educational efforts and not enforcement. The Strategic Plan, however, specifically provides that where appropriate earthwork contractors will be named as responsible parties and that "this approach has been identified as a critical step in the deterrence of irresponsible site preparation and operations." (Axner Exhibit 1, Strategic Plan, Sec. 7.3.1., p.15.) Furthermore, nothing in the Strategic Plan limits the Central Valley Water Board's discretion to pursue enforcement where otherwise authorized. The Strategic Plan does not promote a policy of education over enforcement for contractors nor does it shield Axner from liability for violations of the federal Water Pollution Control Act (Clean Water Act)(33 U.S.C. § 1311) and the Water Code.

The second policy statement made by Axner is an assertion that the involvement of multiple enforcement agencies is preventing the Dischargers from conducting meaningful work to bring the Site into compliance. It is typical for multiple agencies to be involved when site development is conducted without the necessary permits and there are water quality discharge violations as a result of that development. It is also sometimes the case with environmental regulation that it is more difficult to correct a situation than to get the appropriate authorization before conducting work.

Regardless, this policy statement is not relevant to the matter at issue. Violation 1 of the ACL Complaint seeks to impose administrative civil liability for past discharges that occurred as a result of work conducted by Axner. Nothing in the ACL Complaint seeks liability for ongoing or potential future violations. Furthermore, the Department of Fish and Wildlife, the County of Shasta and the Central Valley Water Board's enforcement staff have been coordinating and working collaboratively to get the Dischargers to address current conditions on the Site. The simple fact is that the Dischargers will have to obtain the appropriate authorization from each

regulatory entity as required by law in order to conduct the necessary work, even if that work is intended to bring the Site into compliance.

III. Eddie Axner Construction, Inc. and Eddie Axner are Liable as "Persons" who Discharged Pollutants into Waters of the United States

The legal basis for holding Axner liable is derived from the plain-language reading of the Water Code and the underlying Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1311). Water Code section 13385 states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section: . . .

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.

"Person" is generally construed as each individual party that is responsible for the discharge. Here, Axner and Mr. Cordes are all responsible parties because they are persons that violated section 301 of the Clean Water Act by discharging pollutants into waters of the United States. Axner as the contractor that conducted the grading and site development activities without the appropriate erosion control mechanisms to prevent that newly disturbed soil from entering waters of the United States and Mr. Cordes as the property owner who hired Axner to conduct the work that resulted in the discharge.

It is also appropriate to look at Clean Water Act case law since the Porter-Cologne Water Quality Control Act (Water Code Sections 13000 et al.) is the state's authority for implementing that Act. Finding that both the property owner and the contractor who conducted the work that resulted in the unauthorized discharge of waste are jointly and severally liable is consistent with the obligation that Federal Courts have imposed under section 301 of the Clean Water Act. (*United State v. Lambert* (S.D. W. Va. 1996) 915 F. Supp. 797 [finding that the Clean Water Act imposes liability both on the party who actually performed work and on the landowner as the person responsible for control over performance of the work].)

Furthermore, the State Water Resources Control Board (State Water Board) has consistently found that similar "person" language found in Water Code section 13304 imposes joint and several liabilities:

The State Water Board has a long-standing policy of assessing joint and several liability against all responsible parties in cleanup cases...[I]t remains the Board's intent to name all responsible parties jointly and severally liable in cleanup actions.

(*In re: Petition of James Salvatore*, Order WQ 2013-0109, at p. 19; see also *Union Oil Company of California*, WQ Order No. 90-2 ["we consider all dischargers jointly and severally liable for discharges of waste"]; and *Ultramar, Inc.*, WQ Order No. 2009-0001-UST, at p. 7, fn 12 ["All of the responsible parties are jointly and severally liable for the unauthorized releases."].)

In *Union Oil Company of California*, WQ Order No. 90-2, the State Water Board stated that the Regional Board is authorized:

To issue either one order, or several orders with coordinated tasks and time schedules, to all persons it finds are legally responsible, requiring any further investigating and cleanup which is necessary.

(WQ Order No. 90-2, at p. 3) The State Water Board went on to say that, "while we consider all dischargers jointly and severally liable for discharges of waste, it is obviously not necessary for there to be duplication of effort in investigation and remediation." (*Id.* at p. 4 (emphasis added).)

The State Water Board has consistently applied joint and several liability in cleanup and abatement orders because, in part, doing so conserves time and maximizes limited resources of the agency that must prioritize its actions and act on behalf of all members of the public to address serious water quality issues, while still allowing the private parties the opportunity to seek redress through a contribution action if one is needed.

Similarly here, marijuana cultivation is an increasingly wide-spread problem with serious water quality impact that the State and Regional Water Boards must address through limited

resources. Imposing joint and several liabilities for these water quality violations allows the Central Valley Water Board to address serious water quality issues with all the parties responsible for the discharge, while still allowing the private parties the opportunity to seek redress through a separate civil law suit if appropriate.

Nothing in the plain language of Water Code section 13385 supports Axner's assertion that liability should be other than joint and several. Furthermore, here where the parties have acted in concert and chosen to proceed without a written contract assigning responsibilities, it is virtually impossible for the Central Valley Water Board to apportion or assign liability to one party over the other.

IV. The Work Conducted by Axner Caused the Discharges Alleged as Violation 1

Axner's Response attempts to deflect responsibility by raising a number of arguments and asserting facts that ultimately are not relevant to the storm water discharge violations alleged as Violation 1 in the ACL Complaint. Specifically, Axner asserts that: (a) he (Axner) has no independent authority or ability to obtain coverage under the General Permit or install erosion control; (b) that the Site had problems; (c) that Axner had installed limited erosion control measures; and (d) that subsequent road work on the Site was to blame for the alleged violations. These arguments are not on point and at best merely distract attention from the relevant facts and substantial evidence supporting the imposition of liability for Violation 1.

a. Axner's Inability to Obtain Coverage Under the Construction Stormwater General Permit Does Not Authorize Axner to Violate the Clean Water Act

The Prosecution Team acknowledges that it is the property owner (Mr. Cordes) who is responsible for filing a notice of intent under the Construction Storm Water General Permit (General Permit). Regardless, Axner's inability to independently obtain coverage under the General Permit does not absolve Axner of responsibility to comply with the Clean Water Act and the Water Code. The liability associated with Violation 1 is based on the Dischargers' actions that resulted in unpermitted discharge of waste to waters of the state and waters of the United States. Furthermore, Mr. Axner is an experienced licensed contractor and erosion control specialist. As such, Mr. Axner certainly is aware of the requirement to obtain coverage under the General Permit as well as the importance of obtaining necessary permits prior to initiating

qualifying grading activities, which is evidenced by Axner's Response, page 5, second paragraph *"While completing the work at the Site, Axner told Cordes repeatedly that erosion control measures were needed to be in place."*

It is not sufficient, as Axner asserts repeatedly in his Response, that Cordes advised Axner that he would obtain the necessary permits and take care of erosion control measures. Mr. Axner knew, or should have known, that the appropriate authorization was not obtained prior to conducting the work and that no erosion control plan was developed or going to be implemented.

The subject permits, if issued, would have certain requirements (construction specifications, mitigation measures, etc.) to protect human health and the environment. Axner chose to conduct the grading activities without the necessary permits, and only after the Site caught the attention of Shasta County Department of Resource Management did Axner take it upon himself to install erosion controls.

b. Existing Site Conditions Do Not Excuse Further Degradation and Unauthorized Discharges

Axner's argument that the Site had existing problems prior to being purchased by Mr. Cordes is irrelevant to the violation alleged against the Dischargers. None of the violations alleged in the ACL Complaint are for conditions that existed before the purchase of the property by Mr. Cordes.

Axner asserts that one of the terraces already existed at the Site prior to work being conducted by Axner. Regardless, Axner admits that the work done included the re-grading of this terrace. Such re-grading would disturb and/or remove established vegetation on and adjacent to the terrace, creating a greater potential for erosion than existed before re-grading occurred. Also, Axner points to the fire break that previously existed on the property (shown in Prosecution Team (PT) Exhibit 54-1 through 54-12) as not having any erosion control measures installed following the construction of the firebreak. To the contrary, in the photograph provided as PT Exhibit 54-1 you can see three waterbars installed to direct flow off of the firebreak into vegetated areas. This is a standard BMP from the California Forest Practice Rules.

Lastly, the fact that composition of the dirt at the Site is highly erosive, "whether disturbed or not" does not in any way relieve the Dischargers of the obligation to take appropriate measures to minimize discharge of sediment laden storm water during construction activities. To the contrary, there is an increased need for appropriate erosion and sediment control measures when conducting land disturbance activities on soils that are highly erosive. The fact that the composition of the dirt at the Site is highly erosive is all the more reason why the Dischargers' conduct presented a significant threat to water quality.

c. Placement of Brush on Some Slopes Does Not Amount to Erosion Control

Axner asserts that he had no legal authority or ability to install erosion control measures. A few paragraphs later Axner asserts that despite not having the authority or ability, he did install erosion control and that it helped mitigate erosion and claims that he applied brush and timber to the graded areas to help prevent erosion. Axner provided photographs of the claimed erosion control measure as Exhibit 2 of his Response. It is important to note that the photographs provided in Exhibit 2 of Axner's Response appear to have been taken on 28 April 2015, well after the violation period alleged in Violation 1 and the Central Valley Water Board Staff's inspections.

Straw and brush were present only on the east and southeast fill/side slopes of the Lower Terrace at the time of the 28 October 2014 Inspection. Central Valley Water Board Staff did not recognize this brush during the inspection as an attempt at erosion control. If Axner intended to use the brush as erosion control, why wasn't it placed on all the fill/side slopes of the terrace and the Access Road?

The straw that was present during the 28 October 2014 Inspection had recently been placed, as is exemplified by its color and integrity (PT Exhibit 52, DSCN0065), on the east and southeast fill/side slopes. There was no evidence at the time of the inspection that straw had been placed on those slopes prior to the recent application of straw (i.e. there was no older straw found on those slopes that would have been in place and used as an erosion control measure during the 2013-2014 wet weather period). There was also no evidence of any other erosion control

measures being implemented prior to the 2013-2014 wet weather period discovered on the Site during the 28 October 2014 Inspection.

The use of brush alone as an erosion control measure on granitic soils with slopes of 2:1 or greater would be known (or should be known) by any expert in erosion control to be ineffective. Eddie Axner Construction advertises that they conduct erosion control operations/work and it is evident from eddieaxner.com and from conversations with Eddie Axner that they have many years of experience in erosion control. (See PT Exhibit 44, PT Rebuttal Exhibit 59.) Therefore, it is reasonable to infer that Eddie Axner or agents of Eddie Axner Construction, Inc., knew that using brush on the east and southeast slopes of the Lower Terrace was an ineffective erosion control measure when they implemented it.

Finally, the presence and or effectiveness of the brush on these slopes as erosion control is irrelevant to the violations alleged as Violation 1. The discharges alleged as Violation 1 consists of storm water discharges from the Lower Terrace and the Access Road during the 2013-2014 wet weather period (between 9 November 2013 and 29 March 2014); areas where no brush or straw was placed. No discharges are alleged from the fill/side slopes on which this brush was placed.

d. Work Conducted on the Site after the Violation Period Alleged is Irrelevant

Axner's Response asserts that "but for" the additional road building and grading at the site that occurred after Axner's work "the alleged Violation 1 might not have been as severe, or existed at all." This assertion was also raised by Axner in his comments in response to the draft Cleanup and Abatement Order issued on 21 January 2015. (PT Exhibit 16.) The Prosecution Team considered this possibility and determined that this subsequent work could not have impacted the discharges alleged in Violation 1 because it occurred after the violation period alleged.

The volume calculation and proposed liability for Violation 1 is for storm water discharges originating from the Lower Terrace and the Access Road during the 2013-2014 wet weather period (between 9 November 2013 and 29 March 2014). Based on staffs' interviews with the Dischargers, the additional road work was conducted after the 2013-2014 wet weather period

(April or May 2014) and as a result the additional site work could not have had an impact on Violation 1 in the proposed Order.

**V. The Calculated Administrative Civil Liability Amount for Violation 1 is
Appropriate and Supported by Substantial Evidence**

Axner seems to want the best of both worlds. Axner's Response asserts that liability against Axner should be lessened if the Central Valley Water Board finds that Mr. Cordes has a limited ability to pay, but that all the culpability rests with Cordes when considering the other specific liability factors and that none of those factors that would adjust the liability upwards should apply to Axner.

Any adjustment of the liability imposed on Mr. Cordes for a demonstrated inability to pay is irrelevant to Axner's liability and no inequity would result for holding Axner liable for the entire liability amount proposed for Violation 1. For the reasons discussed in more detail herein, in the ACL Complaint, and in Attachment A of the ACL Complaint, Axner is just as responsible for discharges alleged in Violation 1 as Mr. Cordes.

The Prosecution Team, in conducting the methodology established in the State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) for determining administrative civil liability and considering the factors required to be considered under California Water Code section 13385 subd. (e), contemplated separate factors for each of the Dischargers. (see PT Rebuttal Exhibit 61.) The Prosecution Team determined, however, that with the possible exception of the economic benefit analysis, the factors analysis for each of the Dischargers were substantially similar. Furthermore, when there was a factor that would lower liability for one of the Dischargers when considered separately, then the Prosecution Team provided that advantage to all the Dischargers. For example, in step four of the methodology the Prosecution Team considered cleanup and cooperation of the Dischargers as a multiplier and assigned the lowest value of 0.75 giving all the Dischargers credit for Mr. Axner's cooperation and implementation of some Best Management Practices since the 28 October 2014 inspection. (PT Exhibit 2A, p.5.)

The Economic Benefit factor is most relevant in determining the minimum liability that should be imposed on a party in accordance with the Enforcement Policy and Water Code section 13385. If the Central Valley Water Board were inclined to impose the minimum liability on the Dischargers, then additional consideration could be given to what Axner's actual economic benefit was from agreeing to conduct this work without the appropriate permits, and in manner that minimized costs by excluding the necessary erosion control measures.

Axner's Response further suggests that the Prosecution Team's calculation of liability is improper because the Prosecution Team; (1) did not identify the manner in which beneficial uses would be harmed; and (2) has not provided sufficient evidence to support the assertion that any discharge caused by the Dischargers would cause a significant amount of additional harm over and above that caused by the very same material which occurs every time that there is meaningful precipitation.

Attachment A of the ACL Complaint and Section 10.d. of the Cleanup and Abatement Order describes the manner in which the listed beneficial uses of Cottonwood Creek and its tributaries would be harmed by unauthorized discharges of waste from the Dischargers' clearing, grading and road building activities. (PT Exhibits 2a and 5.) In particular, this section states that increased erosion from the Dischargers' land disturbance activities and the resulting turbid and sediment laden storm water discharges could: "alter the hydrologic and sediment transport regimes of the Unnamed Tributaries affecting the flow of water and establishment of vegetation", "threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics", increase "treatment and/or maintenance costs for downstream agricultural and municipal users", and "cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception in aquatic fauna". Furthermore, the Environmental Impact Assessment prepared by the Department of Fish and Wildlife for the Site detail the type of significant impacts that are reasonably anticipated from sedimentation in this receiving water. (PT Rebuttal Exhibit 60, p. 17 - 19.)

The evaluation of the potential harm to beneficial uses factor in the Enforcement Policy methodology considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or

indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0) being negligible and (5) being major.

The Prosecution Team assigned a score of 3 or Moderate for Factor 1 based on the definition provided in the Enforcement Policy. The definition of Moderate; "*moderate **threat to beneficial uses** (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects)*" (PT Exhibit 60). It is reasonable to expect that turbid and sediment laden storm water runoff from disturbed areas of the Site impacted beneficial uses and should attenuate without appreciable acute or chronic effects.

With regard to the Physical, Chemical, Biological or Thermal Characteristics of the Discharge, the factors are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material, as provided in the definition of each category. For purposes of the Enforcement Policy, "potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

Here, the Prosecution Team assigned a score of 2 or Moderate for Factor 2 based on the definition provided in the Enforcement Policy. The definition of Moderate; "Discharged material poses a **moderate risk or threat to potential receptors** (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection)". The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0) being negligible and (5) being major.

Axner's Response also stated many times that the soils of the Site are highly erodible and implies that there would be a high degree of erosion and sedimentation occurring on the Site

regardless of the Dischargers land disturbance activities. However, Axner's Response is stating a false causality between highly erodible soils and a landscapes propensity to erode. Prior to Mr. Cordes purchase, the Site was heavily vegetated with grasses and shrubs, visible in photos taken of the Site by the previous owners (PT Exhibit 54). As is clearly visible in photos taken during the 28 October 2014 Inspection (PT Exhibit 52, DSCN0061 – DSCN0083) natural vegetation in the area of the Site does not easily recruit and reestablish in areas where the soil has be disturbed and is continuing to erode. Therefore, there is evidence contrary to the idea that the Site was experiencing a high degree of erosion prior to the Dischargers land disturbance activities.

Accordingly, the Prosecution Team's calculation of liability complies with the Enforcement Policy and is supported by substantial evidence.

VI. All the Necessary Parties are Before the Central Valley Water Board

Axner's Response asserts that liability proposed against the Dischargers should be reduced because there are two additional parties, the party responsible for the additional road work and the business that rented the heavy equipment used to conduct that work. For the reasons explained in section IV.d. above, the additional road work does not impact the violations alleged against Axner as Violation 1. Furthermore, Mr. Cordes seems to be the only party that knows who conducted that additional road work and has been unwilling to provide any information on that party. Nothing in these proceedings would prevent Mr. Cordes from seeking contribution or reimbursement from that party for any liability imposed for Violation 2. Lastly, Axner fails to provide any theory or legal authority for how the heavy equipment rental company could be held liable for any of the violations alleged in the ACL Complaint.

VII. Christopher Cordes Inability to Pay Claim is Incomplete and Misleading

Christopher Cordes' claim of an inability to pay the proposed liability lacks appropriate and sufficient supporting evidence. Mr. Cordes submitted an Individual Ability to Pay Claim (Claim Forms), three recent tax returns for calendar years 2012, 2013, and 2014, and end-of-year Balance Sheets and Profit & Loss statements regarding his business (sole proprietor) for 2013

and 2014. At first look the Claim Forms seem to indicate that Mr. Cordes has very little income or unleveraged assets. The Claim Forms, however, are incomplete and misleading.

The tax forms submitted include Schedule C attachments for Profit or Loss from Business. It is important to note that business-related income and expenses included on this tax form do not corroborate with the Profit & Loss statements provided by Mr. Cordes. It appears that the "Salary" expense from the Profit & Loss statements was entered under Part I of tax form Schedule C as the "Gross Sales." In both 2013 and 2014, this was a gross underestimate of the company's taxable income. In actuality, Cordes' company generated approximately \$222,192 and \$138,514 in annual revenue for calendar years 2013 and 2014, respectively (based on Profit & Loss statements). In addition, Expenses entered under Part II of Schedule C do not match those expenses included in the Profit & Loss statements for those years. Furthermore, no financial information was submitted concerning Pacific Biodynamics, a nonprofit for which Mr. Cordes is listed as the sole corporate officer. (PT Exhibit 46.)

In Part I, Subsection 2 of the Claim Form, Mr. Cordes indicated that his annual salary is \$39,434. This matches the "Salary" expense from the Profit & Loss statement for 2014, and the business "gross sales" entered on the 2014 tax form Schedule C. According to the expenses identified on the worksheet included with the Claim Form, Mr. Cordes has personal monthly expenses totaling \$5,190. This amounts to annual personal expenses of \$62,280 per year. Additional annual expenses of \$6,900 (not including FICA and legal services) were also identified on this form bringing his net annual expenses to \$69,180. Installment payments on the Shasta County property were not included on the Claim Form and amount to \$2,713.64 per month, or \$32,564 per year. These annual expenses (totaling \$101,744) are assumed to be after-tax expenses, indicating that Mr. Cordes has an annual income before taxes in significant excess of this amount. Based on his salary claim for 2014, there is gross income not otherwise accounted for.

Finally, Mr. Cordes listed six bank accounts under Part III, Subsection 1 of the Claim Form. Those six accounts, however, did not include a third Wells Fargo account that appears on the 31 December 2014 Balance Sheet. Total assets in those accounts listed on the Claim Form amount to approximately \$4,118. According to the Balance Sheet provided by Cordes, however, approximately \$28,260 was retained available in three separate Wells Fargo accounts


as owner's equity as of 31 December 2014. If there is an additional third Wells Fargo account, it should be included in the Claim Form. Also, if there is, in fact, owner's equity related to the business it is his owner's interest or investment in the company and it should be listed in Part III of the Claim Form as a tangible asset belonging to Cordes.

Mr. Cordes' claim of an inability to pay the proposed liability lacks appropriate and sufficient supporting evidence, is incomplete, and, in fact, indicates that Mr. Cordes has an annual income in excess of what is being reported in his Claim Forms. For these reasons, and the evidence of valuable real property assets (PT Exhibits 26-33.), Mr. Cordes has not demonstrated an inability to pay. The Central Valley Water Board should not adjust the penalties proposed in the ACL Complaint based on the claimed inability to pay.

VIII. Conclusion

For the reasons stated above and in the Prosecution Team's Legal and Technical Analysis, the ACL Complaint, and Attachment A to the Complaint, the Central Valley Water Board should assess administrative civil liability in the amount proposed.

For the Prosecution Team:



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